

The opinion in support of the decision being entered today was *not* written for publication in a law journal and is *not* binding precedent of the Board.

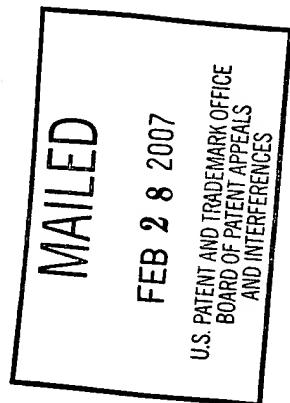
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSHUA M. KOPELMAN, CHRISTOPHER D. FRALIC,
and SRINIVAS BALIJEPALLI

Appeal 2006-2635
Application 09/935,287
Technology Center 3600

ON BRIEF



Before ANITA PELLMAN GROSS, STUART S. LEVY, and ROBERT E. NAPPI, *Administrative Patent Judges*.

GROSS, *Administrative Patent Judge*.

STATEMENT OF THE CASE

Kopelman, Fralic, and Balijepalli (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1 through 13 and 21 through 32, which are all of the claims pending in this application.

Appellants' invention relates to a computer-implemented method for listing goods for sale on a website by receiving from the seller product information in the form of a series of tones generated on a touch tone

telephone. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A computer-implemented method for listing an independent seller's good for sale using a CPU, a memory operatively connected to the CPU and a program stored in the memory and executable by the CPU for presenting the good for sale on a website, the method comprising:

receiving from a seller information identifying a good, the information comprising a series of tones generated by depression of keys of a telephone; and

presenting the good for sale on a website.

The prior art reference of record relied upon by the Examiner in rejecting the appealed claims is:

Lalonde 5,283,731 Feb. 01, 1994

Claims 1 through 13 and 21 through 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lalonde.

We refer to the Examiner's Answer (mailed April 6, 2006) for the Examiner's complete reasoning and to Appellants' Brief (filed January 13, 2006) and Reply Brief (filed June 8, 2006) for Appellants' responsive arguments.

SUMMARY OF DECISION

As a consequence of our review, we will affirm-in-part the obviousness rejection of claims 1 through 13 and 21 through 32.

OPINION

In rejecting independent claim 1, the Examiner asserts (Answer 3-4) that Lalonde discloses all of the limitations except for the use of a website. The Examiner contends that "using a website to present a good for sale is a well known, hence obvious, step to follow for those of ordinary skill in the art." The Examiner (Answer 4) provides as motivation to modify Lalonde "to present the good for sale to as wide an audience as possible by using the Internet, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results." Appellants do not contest the obviousness of presenting goods for sale on a website.

Appellants, however, contend (Br. 5) that Lalonde fails to teach that the identifying information for the good "compris[es] a series of tones generated by depression of keys of a telephone," as recited in independent claim 1. Appellants submit the same argument at pages 2-4 of the Reply Brief. The first issue, therefore, is whether Lalonde teaches using a series of tones from a touch tone phone to identify a good for sale.

Lalonde discloses (col. 5, ll. 29-37) transmitting a transaction identifier (for the received call) using touch tone signals from a phone. The identifier identifies the call, not the good for sale. Lalonde further discloses (col. 5, ll. 46-49) using touch tone keys on a phone to "identify a desired function." Lalonde explains (col. 5, ll. 52-61) that such functions include: place an ad, change an ad, renew an ad, and cancel an ad. Again, the touch tone signals do not identify a good for sale.

The Examiner (Answer 7) asserts that Lalonde's disclosure that the Interactive Voice Recognition (IVR) system can be automated suggests

using touch tones to provide information identifying a good. Appellants assert (Br. 7-8 and Reply 4) that the use of the IVR system is limited to the step of sending information to the DBS and does not include the step of gathering ad information. We find that Lalonde discloses (col. 6, ll. 3-10) that when the seller places a call, the IVR sends an operator request message to the DBS, and the DBS prompts the operator for information about the ad. Lalonde continues (col. 6, ll. 10-13) that the operator sends the requests to the seller via the headset, "receives the seller's responses via the same path," i.e., through the headset, "and inputs such responses to DBS 16." Lalonde states (col. 6, ll. 14-15) that "*this step* could be automated using the IVR," (emphasis ours) but that a human operator is preferable in order to explain options to the seller. By "*this step*" Lalonde refers to the last mentioned step, or rather, the step of an operator inputting to the DBS the responses about the ad received from the seller, as asserted by Appellants. However, if the IVR is to input the received responses to the DBS, then the IVR must first receive the responses about the ad from the seller. Since the IVR responds to digital or touch tone inputs, we find that the seller inputs responses about the ad (or information about the product) using the buttons on a touch tone phone. Accordingly, we will sustain the obviousness rejection of claims 1 and 2.

Regarding claims 3 and 23, Appellants contend (Br. 8-10) that Lalonde fails to disclose providing an identification code by touch tone phone. Appellants add (Br. 9) that adding a code, such as a UPC code, to an ad would not provide meaningful information to the buyer in a system like that of Lalonde. The Examiner asserts (Answer 4) that "standard product identification codes such as UPC and ISBN number are well known, hence

obvious, to those of ordinary skill in the art, as a convenient means for identifying particular goods or products."

Lalonde, as discussed *supra*, implies entering information about the ad using buttons on a touch tone phone. Lalonde fails to disclose exactly what format the information typed in by the seller would take. The information provided by the seller is sent to the IVR. IVR is defined (col. 3, ll. 64-66) as a computer which stores digital audio scripts and plays back the scripts in response to digital or touch tone inputs. The only example of how the IVR is used is set forth by Lalonde at column 5, lines 46-51, where Lalonde describes the IVR as playing a script asking the seller to press certain keys on the phone to identify a desired function. In other words, Lalonde describes using the IVR as a voice-prompt system, as recited in claim 2. Further, Lalonde states (col. 6, ll. 14-18) that the placing of an ad involves numerous available options. Since Lalonde gives no further explanation as to what format the seller might use to supply the information to the IVR, the skilled artisan would expect the automation using the IVR, explained *supra*, to involve a voice-prompt system for the various options. We would have to resort to speculation to say that the seller would use something other than a voice-prompt system.

We acknowledge that for each option, the response might be considered an alphanumeric sequence of a standard identification code. However, Appellants disclose (specification, p. 6, ll. 15-22) two embodiments, one with a voice-prompt system, and the other with a standard identification code (such as a UPC or ISBN), and recite the two embodiments in claims 2 and 3, respectively. Therefore, we will treat the limitation of a standard identification code in claims 3 and 23 as different

from responses to a voice-prompt system as in claim 2. Since we find no teaching or suggestion of a standard identification code for the ad, or the good for sale, we cannot sustain the rejection of claims 3 and 23, nor of their dependents, claims 4, 5, 8, 21, 22, and 24 through 32.

As to claim 6, Appellants assert (Br. 10) that "Lalonde is devoid of any disclosure of presenting a good for sale using information provided by the seller and information related to the good that has been retrieved from a database." Lalonde, however, discloses (col. 4, ll. 38-68) an ad database with several fields including geographic area, asking price, number of bedrooms, etc. The information from the fields is retrieved, and the specific information from the seller is added, and the result is presented as the ad. Thus, Lalonde presents a good for sale using information provided by the seller and information related to the good that has been retrieved from the database. Accordingly, we will sustain the rejection of claim 6.

Claim 7 recites that the presentation of the good for sale is performed in real time. Appellants assert (Br. 11) that Lalonde "is completely silent in this regard." Lalonde states (col. 3, ll. 8-10) that "because there is no separate index creation step, new ads are instantly available, creating a real time system." Therefore, we will sustain the rejection of claim 7.

Claims 9 and 10 include the steps of retrieving from a database and providing a recommended sale price to the seller and receiving a selected price or an acceptance of the recommended price. Appellants contend (Br. 12-13) that Lalonde fails to disclose retrieving sale price information from a database during the listing of the good for sale. The Examiner argues (Answer 5) that sellers often check prices, such as a Blue Book value of a used car, before determining an asking price. The Examiner contends

(Answer 5) that it would have been obvious "to include someone/something determining and recommending to the seller a recommended sales price, so that the seller would be able to price the good in accordance with the market for the good." Although we agree with the Examiner that sellers often check comparable prices for goods before setting asking prices, we find no suggestion in Lalonde to include in the ad database sale price information nor to provide recommended sale prices to the seller during the listing of the ad. Consequently, we cannot sustain the rejection of claims 9 and 10.

Claim 11 recites a step of receiving a seller identification code. Appellants contend (Br. 14) that Lalonde fails to disclose a seller identification code that identifies the seller. However, as pointed out by the Examiner (Answer 11), Lalonde states (col. 6, ll. 21-22) that "the operator asks the seller to identify itself, such as by supplying a seller ID or other identifying information." Clearly, Lalonde discloses a seller identification code. Accordingly, we will sustain the rejection of claim 11. As Appellants add no further arguments for claim 12, which depends from claim 11, we will also sustain the rejection of claim 12.

As to claim 13, Appellants contend (Br. 15-16) that Lalonde fails to teach or suggest using a seller's telephone number to identify the seller. The Examiner (Answer 6) admits that Lalonde does not explicitly disclose using a seller's telephone number to identify the seller but explains that it is well-known to use a telephone number as an ID for an account. We agree that Lalonde does not specifically mention using a telephone number for seller identification purposes. However, Lalonde does disclose (col. 6, ll. 21-22) using a seller ID "or other identifying information." Since Lalonde leaves open the possibility of other known means of identification, and since the

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telephone number is a known identifier for people, it would have been obvious to use the telephone number as the seller identification.

ORDER

The decision of the Examiner rejecting claims 1 through 13 and 21 through 32 under 35 U.S.C. § 103 is affirmed as to claims 1, 2, 6, 7, 11 through 13 but reversed as to claims 3 through 5, 8, through 10, and 21 through 32.

AFFIRMED-IN-PART



ANITA PELLMAN GROSS
Administrative Patent Judge

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